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In the

Supreme Court of the United States

OCTOBER TERM, 1962

No. 543

CHARLES D. STUART, ET AL.,
Appellants,

v.

WILL WILSON, ATTORNEY GENERAL OF TEXAS,
and
TEXAS STATE BOARD OF MEDICAL EXAMINERS,
and
HENRY WADE, DISTRICT ATTORNEY OF
DALLAS COUNTY,
Appellees.

On Direct Appeal from the United States District Court for the Northern District of Texas, Dallas Division

APPELLANTS' PETITION FOR REHEARING

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To the Honorable Supreme Court of the United States:

Come now the Appellants in the above styled and numbered cause, and move the Court to set aside its judgment rendered herein on the 21st day of January, A.D. 1963, and

in lieu thereof to note probable jurisdiction of this cause, and set the same down for the submission of briefs on the merits and hearing by oral arguments.

The basis of this motion is that it is hoped by the Appellants in this case that their long and hard-fought battle to preserve their right to practice their honorable and lawful profession will not be disintegrated without a full hearing before this Honorable Body. These Appellants fervently believe that this Honorable Supreme Court of the United States is a protector of the rights of the citizens of the United States under the Fourteenth Amendment to the Constitution. These Appellants do not believe that this Court, after a full hearing hereon on the merits, will consciously permit the State of Texas by an unreasonable law, to deprive these Appellants of their constitutional rights to follow a lawful profession.

These Appellants have a common law right to practice the healing art known as Naturopathy; and no state can deprive them of this right by an unreasonable regulation. These Appellants want a reasonable regulation; but they do not want an unreasonable regulation which amounts to a deprivation of their rights and a destruction of their field of practice.

Naturopathy is not a neglected profession, and Naturopathic practitioners are multifold. Statistics show that there are some 70,000 natural healers in the United States; and this Honorable Court may be aware of the recent establishment in Washington, D. C., of the Schipell Foundation for the advancement of Naturopathy.

These Appellants with all due sincerity and in full recognition of the construction of laws, humbly submit to this Court that the Basic Science Law, Article 4590c, of the Revised Civil Statutes of the State of Texas, 1925, as amended to date, contains the basic uniform minimum standards for anyone who desires to practice any branch of the healing arts in the State of Texas. In the same vein, these Appellants submit to this Honorable Court that the Texas Medical Practice Act, Articles 4495-4512, Revised Civil Statutes of the State of Texas, 1925, as amended to date, is the prescription of qualifications for those persons who desire to practice as general medical practitioners and surgeons or allopaths, and is in no wise the basis for establishing the qualifications for those who desire to practice the natural healing art known as Naturopathy. (See field and scope of Naturopathy in definition thereof on page 33 of the Jurisdictional Statement.)

These adherents of the drugless, non-surgical, natural method of healing arts desire to aleviate and heal the pain and suffering of mankind, without the use of toxic drugs, X-ray and surgery. Their method of the healing arts has been very successful. This method of natural treatment has been successful in many instances after the general medical practitioners and surgeons or allopaths have failed in their use of toxic drugs, X-ray and surgery.

Why should the Naturopaths be prevented from helping mankind by the naturopathic system of treatment by an arbitrary state law which requires Naturopaths to study, train for, and be examined on subjects required for general

medical practitioners and surgeons or allopaths, before such Naturopath can follow his method of the healing art. The very purpose of the Fourteenth Amendment is to prevent just this thing, and to permit the equal rights to practitioners of the different methods of the healing arts. And why should mankind suffer from this unequal treatment by an arbitrary state law? It is no secret that the allopathic school of medicine is attempting to destroy their natural competitor, the Naturopathic physician. The allopaths believe in the use of toxic drugs, X-ray and surgery as the best method of the healing art. The naturopaths feel just as strongly that the application of natural food substances, which are naturally assimilable by the body, to restore a proper chemical balance to the body and manipulation and other natural treatments, are the best methods of treatment to cure a person or to maintain health. Each has his right to practice; and the Citizens of the United States of America have their equal rights to choose which treatment they prefer.

It is imperative that this Honorable Court grant an open and full oral hearing in this case on the merits. This Honorable Court, which I like to refer to as the People's Court, the protector of Citizen's rights, is the last hope for the preservation of the natural healing art.

I realize that in many instances, the cause of Naturopathy is unpopular. I attribute two reasons for this: First, people generally know little or nothing about Naturopathy; and second, the American Medical Association wants Naturopathy eliminated as a competitor.

I am acutely aware of the disabuse one receives from fostering the cause of Naturopathy. I have many friends who are general medical practitioners and surgeons or allopaths, and they scoff at the idea of Naturopathy; and I have lay friends who think of Naturopathy as quackery. But I think the cause of Naturopathy is more important than a lawyer's disabuse.

Reflecting back for a moment on the reasons for the unpopularity of Naturopathy, I think that ignorance of Naturopathy is the first reason to elaborate upon. Usually if there is something that a person knows little or nothing about, he is generally afraid of such subject and generally dislikes it. I have had skeptics to ask me what is Naturopathy, how do you spell it, how do you pronounce it? And after it is explained to them, they begin to understand what it is, and the cloak of mystery is lifted and they begin to like what they know about Naturopathy. In many instances, these same skeptics will say, "I know someone who was cured by someone like that;" and many times I have heard people say that they know of a person cured by a natural healer after the drug doctors and surgeons or allopaths had given up. Therefore, I believe that once Naturopathy is fully understood by laymen generally, it will actually be a popular method of the healing art rather than being tainted with its present unpopularity.

Let us hark back for a moment to the attitude of the American Medical Association as the second reason for the unpopularity of Naturopathy. As the evidence in this case shows, no one but an allopath can be a member of the Ameri-

can Medical Association. I think this Honorable Supreme Court will take judicial notice of the fact that the American Medical Association is a powerfully influential body, and that it and its local organizations and societies wield a tremendous influence on the public and upon the legislatures and legal bodies. This allopathic association or fraternity naturally believes that their ideas are best, that their thoughts are best, that everyone else should conform to their rules, philosophies, tenets and teachings. This is a natural desire. They want the public to recognize them as the one and only kind of doctor, and likewise, they want the legislature to recognize them as the one and only kind of doctor.

Well, I just don't believe our system of government will tolerate this. The practice of medicine is not an exact science by any means. Let me point out one principal difference between an allopath and a naturopath as far as theory is concerned.

An allopath believes that illness in the human body is caused by the invasion of the human body by bacteria from without; and that to cure the illness the bacteria must be destroyed. At the very opposite of the pole, the Naturopath believes that all bacteria in one form or another and in one state or another is always present and existing in every human body, and that an illness in the human body is caused by an imbalance of chemicals and abnormalcy within the body for any reason which permits the harmful bacteria to become dominant in the human body. Now this may seem to concern the most simple and basic theory concerning the cause of illness; however, this conflict of opinion between

the two schools of thought has never been resolved or proved one way or another. Without question, I think we will all agree that Naturopathy is a competitor of the allopath or general medical practitioner and surgeon. The naturopath wants to use natural treatments to cure an illness, and he would not recommend toxic drugs, X-ray, or surgery except as a last resort. The general medical practitioners and surgeons or allopaths do not like this type of competition; they favor the giving of toxic drugs and the use of X-ray and surgery as the way to treat and cure illnesses; naturally, they want the public image of the naturopath to be bad, and they want to foster and obtain laws that will in effect keep these competitors from practicing.

But I say to this Court, with all earnestness and humility, that each school of medicine or the healing art has its right to be recognized, practiced, and reasonably regulated.

These two schools of medicine can co-exist. One of the favorite questions people use to taunt me is, "If your wife were sick, would you take her to an allopath or a naturopath?" My answer to this is that it would make no difference, unless in the beginning there was some particular reason to see one or the other. If I took her first to a naturopath, and he could do her no good, I would then take her to the general medical practitioner and surgeon or allopath, to see what he could do. On the other hand, if I took her first to the general medical practitioner and surgeon or allopath, and he could do no good, I would take her to a naturopath. The two schools of medicine have a different theory and system for curing people. This stems from their basic dif-

ference in concept as to what causes disease, as I have pointed out in the basic bacteria theory hereinabove.

May I please ask the Court's indulgence to bear in mind that when I speak of illness, I am not speaking of accidents, external and internal injuries and the like, which usually call for narcotics as pain relievers, and surgery for purely mechanical repair of portions of the human body, but I do speak of illnesses inherent to the human body.

Graduating from the basic bacteria theory outlined hereinbefore, the naturopath and allopath differ in the method of treatment. The naturopath, believing that a body in its natural state, is healthy, believes that if a state of illness comes into being, it is the result of the body becoming imbalanced and thus, unhealthy. The naturopath believes that since the human body is composed only of chemicals in certain comparative quantities, that an imbalance of these chemicals will cause an imbalanced or unhealthy body. The naturopath believes that by examining the human body and taking and analyzing samples and specimens taken from the body that he can determine where the imbalance of chemicals lies, and that by a prescription of chemicals through natural foods naturally assimilable by the body, or other natural treatment, he can create more or reduce certain chemical contents of the body, and thus place the chemical contents of the human body back in balance and thus restore it to its natural state and healthful condition. And in conformity with this theory, the naturopath believes that the giving of toxic drugs is actually unnatural and harmful to the human body and simply presents a foreign

substance in the body which actually places a greater burden on the body because the body then has to eliminate such foreign matter from the body before the ill person can become well; and likewise, the naturopath looks upon surgery as not a cure *per se* of a natural inherent illness, but a mechanical removal of a portion or an organ of the body or a repair of the same; however, in consonance with this belief, the naturopath does believe that in some instances surgery is necessary to alleviate a mechanical pain or suffering, or to foster a cure of a mechanical illness. Incidentally, the naturopath does not treat or offer to treat communicable, quarantinable and contagious diseases. These do not come within the scope of natural methods of treatment.

On the other hand, the allopath in compliance with his basic theory, that disease of the human body is caused by the invasion of bacteria, treats a patient symptomatically. The allopath attempts to destroy or kill the invading bacteria by attacking the symptoms with toxic drugs, X-ray or surgery. The allopath thus devotes his attention primarily to the effect of the disease, rather than the cause.

And congruously with the naturopath's opinion as above referred to that the introduction of toxic drugs are harmful to the human body, the allopaths themselves are being faced with iatrogenic diseases. The allopaths are finding in a vast majority of instances in their present day practice of medicine that they are having to treat diseases caused by the use or overdose of toxic drugs introduced by the allo-

paths' prescription. This is an alarming situation, and the allopaths themselves are becoming conscious of the situation caused by the use of their own toxic drugs. In many instances these toxic drugs, which many times are popularized by the powerful and lucrative drug industry, cause damage to the blood producing organs of the body, such as the liver and bone marrow, and are carcinogenic agents or malignant producing in their action in that they are destructive of the anti-growth hormones of the body. This also spills over into surgery, such as adhesions caused by surgery and illnesses caused by the unnecessary removal of vital organs of the body.

Personally, and this is my opinion only, I think that the basic naturopathic theory of removing the cause of the disease and thus eliminating the effects thereof is a better basic philosophy than the symptomatic treatment followed by the allopaths.

But here again, with all due respect and humility to this Honorable Court, let me urge upon this Honorable Court that the two schools of medicine should be allowed to co-exist; and that Naturopathy should not be struck down, simply to permit allopathy to exist exclusively. Who knows, the basic principles, teachings and tenets of Naturopathy may someday emerge as more popular than the allopathic method of treatment; but, be that as it may, there is a definite need now, and there will continue to be in the future, for both schools and theories of medicine; and although

they may be diametrically opposed to each other on many theories, basics and principles, it is necessary to have them both, because when one fails, perhaps the other can save, and vice-versa.

And consistent with this uncontradictable position, I think that we must all agree that an examination to determine the proficiency of one aspiring to practice allopathy would be an unreasonable examination to determine the qualifications of one aspiring to be a naturopath; and the contrary is likewise true, that is, an examination given to determine the proficiency of one aspiring to be a naturopath would be an unreasonable examination to give one aspiring to be an allopath. To be fair and reasonable, each school should have its own qualifications and its candidates should be given an examination that befits and pertains to their particular school, and each should have a board of qualified examiners to give such examinations.

CONCLUSION

In conclusion, these Appellants respectfully submit to this Honorable Supreme Court of the United States that they have a just cause, that they have a right to practice a lawful profession, that this right is guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, and they cannot be deprived of this right by having to submit to an arbitrary law which prescribes qualifications for the method of practice of general medical

practitioners and surgeons or allopaths as set forth by Articles 4495-4512 of the Revised Civil Statutes of the State of Texas, 1925, as amended to date, because the prescription of qualifications therein stated are for the general medical and surgical practitioner or allopath and are not reasonable qualifications for one desiring to practice the natural art of healing followed and practiced by the Appellants herein, who are naturopaths. These Appellants respectfully submit that it is the duty of this Court to protect them from the unreasonable and arbitrary interpretation placed upon the aforesaid Texas Medical Practice Act by the Appellees herein and the Courts of the State of Texas and albeit by the Act itself, requiring Appellants to become licensed as general medical practitioners and surgeons or allopaths before they can practice the natural method of treatment as naturopaths; and that this Court should find that the aforesaid Texas Medical Practice Act is unconstitutional insofar as it applies to the Appellants as naturopaths in requiring the Appellants to qualify as general medical practitioners and surgeons or allopaths before they can practice their natural method of treatment as naturopaths because such requirements are unreasonable, and that the State of Texas does have the right under its police power to pass a reasonable regulation of the practice of natural healers or naturopaths; and therefore, these Appellants pray that this Honorable Court set aside its judgment of January 21, 1963, and grant a rehearing herein, and that this Honorable Court note probable jurisdiction in this case, and that this Honorable Court require briefs to be

submitted on the merits in this case, and that this Honorable Court set this cause down for oral argument.

Respectfully submitted,

JAMES L. MCNEES, JR.,
1309 Main Street,
Dallas, Texas,
Counsel for Appellants.

CERTIFICATE

The undersigned, James L. McNees, Jr., Counsel of Record for Appellants herein, does hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay.

JAMES L. MCNEES, JR.,
Counsel for Appellants.

PROOF OF SERVICE

I, James L. McNees, Jr., the Counsel for Charles D. Stuart, et al., Appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the day of February, A.D. 1963, I served copies of the foregoing Appellants' Petition for Rehearing on the Appellees by mailing two copies hereof in a duly addressed envelope with Air Mail postage prepaid, to Tom I. McFarling, Esq., Counsel of Record for Appellees, with such envelope addressed to Honorable Tom I. McFarling, Special Assistant Attorney General of Texas, Capitol Station, Austin, Texas.

JAMES L. MCNEES, JR.